IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.
IN INSOLVENCY

INSOLVENCY NO. 22 OF 1998.

Re: Ashok Shankar Dighe
..Insolvent.

Ex-parte:
Ramnath Shankar Narayananan
.. Petitioning Creditor.

and

Smt. Madhuri Ashok Dighe.
...Respondent.

Mr. U.J. Makhija with Mr. K.J. Somane for Respondent.

Mr. P.G. Pravin i/b L.C.Tolat & Co. for the Petitioning Creditor.

Mr. Y.V. Parikh, Official Assignee present.

CORAM : V.C.DAGA, J.

DATED : 3.4.2006.

P.C. :

. The report submitted by the Official Assignee dated 7.2.2005 under the provisions of the Provincial Insolvency Act ('The Act' for short) has been objected to by Smt. Madhuri Dighe, widow of Mr. Ashok s/o Shankar Dighe. Mr.Ashok Dighe has been declared insolvent. His estate and effects stood vested in the Official Assignee under the Order of Adjudication dated 18.7.2000, passed by this Court in the petition filed by the petitioning creditior Mr. Ramnath Sankarnarayanan on 11.2.1998.

2. Perused the objections raised by Mrs. Dighe

to the report of the Official Assignee. Rival parties were heard. Evidence was examined. All objections are liable to be overruled for the following reasons on the facts sketched hereinbelow.

Factual Matrix:

3. The factual matrix giving rise to the present proceedings reveal that the act of insolvency was committed by the insolvent Mr. Ashok Dighe on 6.1.1998. He was thus, adjudged as insolvent on 18.7.2000.

4. The Official Assignee subsequent to the passing of the order of adjudication had fixed an appointment on 10.11.2000 for the purposes of making inventory of the moveables lying in the residential apartment of Mr. Ashok Dighe situate at Dadar (W), Mumbai. However, meeting took place on 13.11.2000 for private examination of the insolvent touching his estate and affairs thereof.

5. Pursuant to above, inventory of the moveables lying in the aforesaid premises was taken under Official Assignee's Inventory No. 1514. The articles inventorised were claimed by Mrs. Madhuri w/o Ashok Dighe; Shri Chandan s/o Ashok Dighe and Shri Chinmay s/o Ashok Dighe. The said claimants

also filed their respective affidavits of claim in support of their respective claims. The Official Assignee after the investigation admitted their claims with respect to the said articles.

6. In the meeting held with the Official Assignee on 13th November, 2000 for private examination of the insolvent; his estate and affairs; he, inter alia; stated that the said residential premises mentioned in para 1 was joint property with his wife. However, he did not produce any evidence in support of his claim. During the pendency of his private examination, insolvent- Mr. Ashok Dighe, left for heavenly abode on 8th July, 2001. Hence private examination of the said insolvent was treated as closed on 20th July, 2001.

7. The Official Assignee vide his letter dated 7th November, 2001, called upon the Chairman/Secretary of M/s Gurukripa Co-op. Housing Society Ltd. ("The Society") to take a note that right, title and interest of the insolvent Late Ashok Dighe in the said flat stood vested in the Official Assignee. The society was requested not to allow any transfer without the consent of the Official Assignee. A copy of the said letter was also sent to Mrs. Madhuri Dighe, co-owner of the said flat, calling upon her to lodge her claim, if any, with the Official Assignee with necessary

documents.

8. Mrs. Madhuri Dighe, vide her letter dated 20th December, 2001 filed her claim and produced photostat copies of the various documents along with agreement for sale dated 19th April, 1988 and share certificates bearing No. 29, dated 1.8.1999 issued by the society carrying her name jointly with the deceased insolvent/ her deceased husband.

9. The Official Assignee offered inspection of the aforesaid documents to the petitioning creditor. The petitioning creditor after taking inspection of the said documents by his letter dated 2nd July, 2002 requested the Official Assignee to call upon the said co-owner; Mrs.Dighe, to lodge the affidavits from various persons from whom she claimed to have borrowed loans for purchase of the subject flat.

10. In view of the aforesaid, the Official Assignee vide his letter dated 11th October, 2002 called upon Mrs. Dighe to lodge affidavits of the various persons; who had granted loan or financial assistance to her for purchase of the subject flat.

11. Mrs.Dighe, pursuant to the aforesaid letter, lodged the affidavits of various persons with her covering letter dated 20th February, 2003, to which,

the petitioning creditor by his letter dated 19th April, 2003 raised some objections and has called upon Smt. Madhuri Dighe to produce further documents in support of her claim. Mrs.Dighe, thereafter; filed some more documents to support of her claim.

12. The Official Assignee investigated the objections of Mrs. Madhuri Dighe, who was claiming to be the co-owner of the said flat having 80% interest therein. He came to the conclusion that Mrs. Dighe has 50% share in the flat along with her deceased husband-insolvent. It was held that the Official Assignee is entitled to claim compensation from the occupant- Mrs. Dighe till 50% share of the deceased insolvent is disposed of. The Official Assignee, therefore, fixed compensation of the flat @ Rs.1500/- p.m. from the date of adjudication i.e. 18th July, 2000 and called upon the occupant- Smt. Dighe to deposit to the amount of arrears amounting to Rs. 76,500/- within one month from the date of receipt of the demand with monthly compensation at the same rate on or before 15th day of each month.

13. Mrs. Dighe, however, failed and neglected to deposit the said amount and also failed to pay amount of compensation as directed by the Official Assignee. One more chance was given to her to

deposit entire arrears vide subsequent reminder notice dated 27th October, 2004. However, she failed to comply with the said reminder.

14. That during the course of incomplete private examination of the insolvent, he had filed Schedule of his Assets and Liabilities showing the liability of the petitioning creditor alone amounting to Rs. 6,39,071.52. However, as per the affidavit of claim filed by the petitioning creditor; his claim is in the sum of Rs. 13,04,850/-. There is no other creditor claiming recovery against deceased insolvent.

15. The Official Assignee in the above backdrop, submitted his report to this Court and prayed for order in terms of the following prayers:

. (a) This Honourable Court may be pleased to authorise the Official Assignee to take vacant physical possession of Plot No. 32, standing in the joint names of insolvent and his wife Smt. Madhuri Dighe, present occupant, situate in 8th floor, Gurukripa Apartment Co-operative Housing Society Ltd., N.C. Kelkar Road, Dadar, Mumbai- 400 028 from Smt. Madhuri Ashok Dighe amd/or from any person or persons whomsoever is/are found possession of the said flat, with the help of police authorities, if necessary, and by breaking open the lock or the locks, if any, found on the said flat, together with the benefit attached to the shares held by the insolvent issued in their favour by the said society, in respect of the said flat and thereafter permit to sell the same on " AS IS WHERE IS" basis by public auction or Private Treaty on

such terms and conditions as the Official Assignee may deem fit and proper.

. (b) Alternative, if the present occupant of the said flat Smt. Madhuri Ashok Dighe so desires, the Official Assignee may be permitted to sell her 50% share of the insolvent in the said flat as per the valuation to be made by the valuer to be appointed by the Official Assignee.

. (c) That the said Smt. Madhuri Ashok Dighe be ordered to pay to the Official Assignee compensation @ Rs. 1500/- p./m. or at such rate as this Hon'ble Court may deem fit and proper, in respect of the said flat from the date of Order of Adjudication i.e. 18th July 2000 till the date of handing over the physical possession of the said flat to the Official Assignee or till the date of her purchase from the Official Assignee 50% share of the Insolvent in the said flat.

. (d) For such directions and further orders as this Honourable Court may deem fit and proper and according to the nature and circumstances of the case may require."

16. Mrs. Madhuri Dighe filed her counter dated 3rd May, 2005 to oppose above reliefs claimed by the Official Assignee. She prayed for rejection of the report, on the various grounds raised in her counter-affidavit Smt. Madhuri Dighe claims that the said flat was purchased by her along with her husband for total consideration of Rs. 5,17,500/-, out of which she claimed to have contributed Rs. 4,07,025/-; whereas balance amount of consideration amounting to Rs. 1,33,335/- was contributed by Mr. Dighe, deceased husband (insolvent).She claims that she had raised Rs. 4,07,025/- from various sources viz. sale of gold ornaments, Loan on N.S.C.

(Certificates); Encashment of Recurring Account; Loans from friends and relatives, details of which are given by her as under:

(Details of contribution of Mrs. Dighe)

. Sale of Gold Ornaments. .. Rs. 79,979.00
. Loan on NSC .. Rs 21,500.00
. Encashment of Recurring A/c Rs 24,216.00

Loans from 14 persons

1) Mrs.Sneha P. Naik-Satam-Rs.17,500.00
2) Mr. B.S.Satam -Rs.20,000.00
3) Mr. P.B. Naik-Satam -Rs.15,000.00
4) Mr. P.R. Patkar -Rs.10,000.00
5) Mr. P.R. OPatkar -Rs.25,000.00
6) Mr. V.M. Raje -Rs.14,000.00
7) Mr.A.B. Nikam -Rs.20,000.00
8) Mr.Dileep Chaubal -Rs.10,000.00
9) Mrs. Bhiwankar -Rs.14,000.00
10) Mr. D.K.Sawant -Rs.10,000.00
11) Mr.S.N.Dighe -Rs.95,000.00
12) Mrs. R.S. Dighe -Rs.20,000.00
13) Mr. Ganesh Poojari -Rs. 6,000.00
14) Mrs A.V. Lele -Rs. 5,000.00

-Rs. 281,500.00 Rs.2,81,500.00

Total: Rs,4,07,025.00
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17. Mrs. Dighe further claims to have paid stamp duty in the sum of Rs.30,840/- with penalty thereon amounting to Rs. 17,735.00 aggregating sum of Rs. 48,575.00. The said amount was paid on 5.11.1997 i.e. after the death of the deceased husband (insolvent). That is how, she claims to

have made her contribution and seeks to establish her share and interest in the flat to the extent of 80%

18. Mrs. Dighe has given following details and particulars of the amount of Rs. 1,13,335.00 contributed by her Late Mr. Dighe deceased-insolvent towards purchase of the subject flat.

Details of contribution by Late Mr.Dighe

(i).	By sale of Gold ornaments	..Rs.39,965.00
(ii).	Loan on two LIC Policies.	
	No.19243684 Rs.18,660/-	
	No.73334015 Rs. 6,960/-	..Rs.25,620.00
(iii).	NSC Loan Certificate	
	No. 27137 and 27467	..Rs.12,750.00
(iv).	Loans from relatives	
	M.K. Sant	..Rs.20,000.00
	C.N.Sant	..Rs. 8,000.00
	U.N.Sant	..Rs. 7,000.00
	Total:	Rs.1,13,335. 00

Issue:

19. In the aforesaid premises, following issue needs consideration:

. Whether Mrs.Madhuri Dighe proves that she has contributed 80% and that her deceased husband's contribution was only to the extent of 20% for purchase of the subject flat?

CONSIDERATION:

20. Mrs. Madhuri Dighe in support of her claim has filed certain documents on record along with affidavits of various persons to establish her claim. She also tried to establish various sources by which she claims to have raised moneys for purchase of the flat in question. She placed reliance on the entries existing in bank account jointly held by her with her deceased husband in Canara Bank, Ranade Road Branch, Dadar, bearing Account No. 17999, so as to establish her interest to the extent of 80% and also tried to prove her husband's interest to the extent of 20% in the subject flat.

21. Now, let me to turn to the evidence available on record to decide as to whether or not the claims are established.

(A). In order to establish her contribution, Mrs. Madhuri Dighe claims to have realised Rs. 79,979.00 from sale of gold ornaments. In support of her claim, she had produced original sale invoice-cum -receipt issued by one M/s Bhikamchand Mulchand, dated 11.4.1988. It shows sale of gold ornaments worth Rs. 79,979/-. Correspondingly, pay-in-slip of Canara Bank dated 12.4.1988 is also produced on record to establish deposit of the said amount in the joint bank account. Pay-in-slip followed by corresponding entry in the pass book evidencing deposit of the amount of Rs. 79,979/- are sufficient to establish her claim. I do not see any reason to reject her contention in this behalf. I hold that Mrs. Dighe has proved her claim for having raised Rs. 79,979/- from sale of her gold ornaments.

(B). The second item of raising money relates to a sum of Rs. 21,250/-; said to be a loan taken from Sangli Zilla Co-operative Bank against the security of NSC Nos. 31507, 31219 and 14762. According to her, the total loan raised on NSCs was in the sum of Rs. 34,000/- out of which Rs. 21250/- were borrowed in her name; whereas Rs. 12,750/- were borrowed in the name of Mr.Dighe, her Late husband. There is also corresponding pay- in-

slip evidencing deposit the sum of Rs. 34,000/- in her Canara Bank joint account. On the very same day, it appears that this amount was deposited after purchasing Demand Draft for Rs. 34,000/-. Pay- in- slip showing cash deposit dated 21.3.1991 in the Sangli Zilla Kamgar Co-operative Bank, Ltd. is also produced on record to show repayment of the amount of loan in cash.

. It is no doubt true that there appears to be a credit entry showing deposit of Rs. 34,000/- by D.D. purchased from Sangli Zilla Kamgar C-op. Bank Ltd. However, there is no material on record to show that as to what was the respective share of the parties i.e. Mr. and Mrs, Dighe; in the said borrowings of Rs. 34,000/-. In the absence of any such evidence and considering the fact that D.D.of consolidated amount was purchased in the joint name; it is not possible to accept the claim of Mrs.Dighe that out of total loan amount of Rs. 34,000/- an amount of Rs. 21250/- was on her account.

. Mr.Ashok Dighe expired 8.7.2001.Pay-in-slip showing cash repayment of loan in the sum of Rs. 13,555/- coupled with amount of intertest in the sum of Rs.16,665/- plus postage of Rs.15/- make total of Rs. 30,325/-. It does not

throw any light as to how figure of Rs. 13,555/- was arrived at while making payment of cash amount when according to Mrs. Dighe amount of loan borrowed by Mr.Ashok Dighe was only in the sum of Rs. 12,750/-.Thus, her claim to the extent of Rs.21,250/- set up by her is liable to be rejected.

. A judicial note can be taken of the fact that if the bank account or any negotiable instructions is held jointly , then unless contrary is proved, the person whose name is appearing first is supposed to be the holder of the instrument. If that be so, Mrs. Madhuri Dighe could not establish her borrowings to the extent of Rs. 21,250/-. However, granting some latitude in her favour, at the most, it can be said that since the amount was jointly bororowed by husband and wife, she can be said to be entitled to claim 50% of that amount on her own account. I, therefore, propose to accept claim of her contribution to the extent of 50% i.e. in the sum of Rs. 17,000/-, so far as the item under consideration (NSCs) is concerned.

(C). The next source of raising money claimed by Mrs.Dighe is by way of encashment of recurring deposit in the sum of Rs. 24,296/-.

. Mrs. Madhuri Dighe had produced original

pass book of Recurring Deposit Account (R.D.A/c) issued by the State Bank of India, Shivaji Park Branch, Mumbai, bearing Account No. 84/32 held by her in the joint name with her husband - Mr.Ashok Dighe. The closure entry in the account shows transfer of proceeds to her S.B. Account. She has submitted that the draft for Rs.24,296/- was isssued by the State Bank of India after subtracting draft commission/charges. Corresponding credit entry dated 13.4.1988 in her bank account stands proved. These two original documents produced by her are sufficient to establish her claim of raising sum of Rs. 24,296/- through her R.D. Account. However, since the said amount was in the joint name of the husband and wife, her share, in the absence of any other material on record can be taken to the extent of 50%. I, therefore, hold that Mrs.Dighe has established her share to the above claim to the extent of 50% i.e. in the sum Rs. 12,148/- only.

(D). The next item of raising finance relates to the various loans borrowed from various friends and relatives. Let me examine the strength of evidence tendered in this behalf.

. (i) Affidavit dated 10.1.2003 is of one

Mrs. Sneha P. Naiksatam. She claims to have paid Rs. 17,500/- to Mrs. Madhuri Dighe in cash in 16.4.1988. She has further stated that she was working in the Mahanagar Telephone Nigam Ltd. in 1988. Her monthly income was Rs. 2500/- in 1988. She has further stated that Madhuri Dighe had repaid the said sum in bits and parts over the period of time. She has also stated that she has issued one certificate to Mrs. Madhuri Dighe in confirmation of having paid the amount of Rs. 17500/- to her by way of loan.

. Mrs.Madhuri Dighe produced on record 4 pay-in-slips : viz. (1) 2.4.1988- Rs. 4900/-' (2) 13.4.1988 - Rs. 1,000/-; (3) 15.4.1988- Rs.2,000/- and (4) 2.4.1988- Rs. 8500/-, the total of which constitutes Rs. 16,400/-. The affidavit of Mrs. Naiksatam with original pay-in-slips do not establish borrowings alleged to have been made by Mrs. Madhuri Dighe. Mrs. Sneha Naiksatam claims to have paid Rs. 17,500/- on 13.4.1988 in cash. If that be so, how the amounts were deposited on 2.4.1988, 9.4.1988 and 15.4.1988. Prior to the date of borrowings the amounts could not have been deposited by Mrs.Dighe in her account. This evidence produced by Mrs. Dighe goes to show that she is trying to take advantage of the available pay-in-slips with her to connect

credit entries with the alleged loan transaction. This conduct of hers is sufficient to reject her claim. I, therefore, hold that Mrs. Dighe failed to establish that she had borrowed Rs.17,500/- from Mrs. Sneha Naiksatam. Her claim on this count is thus rejected.

(ii). The next item of borrowing is a loan in cash from late father of Mr. P. B. Naiksatam. In order to prove this transaction he has filed his affidavit dated 24.1.2003. Shri Pradeep Satam has stated on oath that his father had paid Rs. 20,000/- to Mrs. Madhuri Dighe as loan. According to him, the loan was given on 16.4.1988 for which his father had issued certificate in favour Mrs. Madhuri Dighe. Copy of the said certificate is produced on record.

. Mrs. Madhuri Dighe has placed on record three pay in slips, viz. (a) dated 12.4.1988- for Rs.8600/-; (b) another dated 12.4.1988 for Rs 2500/-; and (c) third dated 16.4.1988- Rs.10,000/-. All these slips constitute total deposit in the sum of Rs. 21,100/- .If the borrowings of Mrs.Dighe was in the sum of Rs. 20,000/-; then how Rs. 21,000/- came to be deposited in the bank account. Attempt of Mrs.

Dighe is nothing but to take advantage of the existence of pay-in-slips and to connect it with alleged loan transaction. If the borrowing was in the lumpsum; then how it came to be deposited in three instalment. If the amount of Rs. 20,000/- was borrowed on 16.4.1988 then how part of the amount came to be deposited in bank account prior to that date. From where these amounts came in her hands has not been explained by Mrs.Dighe. The affidavit of Mr. Naiksatam produced on record does not inspire judicial confidence. Evidence tendered in this behalf, cannot be accepted . The factum of borrowing Rs. 20,000/- from the deceased father of Shri Pradeep Naiksatam could not be established by Mrs. Dighe.

(iii). The next borrowing sought to be proved by Mrs. Dighe is by way of loan in the sum of Rs. 15000/- from Shri Pradeep B.. Naiksatam. He claims to have given Rs.15,000/- to Mrs.Dighe by cheque No. 00743v dated 11.4.1988 for Rs. 15000/- The credit entry exists in the bank account held in the joint name of Mr. Dighe and Mrs.Dighe. The evidence tendered in this behalf needs acceptance.

(iv). The next two borrowings of Rs. 10,000/- and Rs. 25,000/- are said to be from one Shri Prabhakar P. Patkar. He claims to have paid

Rs.10,000/- to Mrs. Dighe in cash and Rs.25,000/-by cheque No. 806826 dated 11.4.1988 drawn on the State Bank of India, Naupada. The corresponding credit entry showing deposit of Rs. 35,000/- is on record. Since these amounts in cash and by cheques have been deposited in the bank account, I have no hesitation to accept the said evidence produced by Mrs. Dighe Borrowings from Shri Prashant Patkar in the sum of Rs. 35,000/- stand established.

(v). The next items of borrowings pertain to the borrowings made from: (a) Vijay M. Raje in the sum of Rs.14,000/-; (b) Mrs.A.B. Naik in the sum of Rs.10,000/-; (c) Mr. Dilip Chaubal in the sum of Rs, 10,000/-; (d) Smt. Neelam Bhiandkar in the sum of Rs.14,000/-; (e) Mr. D.K.Sawant amounting to Rs.10,000/- aggregated total in the sum of Rs.58,000/-. In order to establish these borrowings, Mrs.Dighe has filed affidavits of the respective persons to established her claim. All borrowings are made by cheques. The corresponding pay-in-slips showing deposits of these amounts in the joint bank account are placed on record. I have, therefore, no hesitation in accepting these borrowings made by Mrs.Dighe from these different persons as mentioned hereinabove.

(vi) . The next two items of borrowings are said to be from in-laws; Shri S.N. Dighe and Mrs.R.S.Dighe; in the sum of Rs.95,000/- and Rs. 2,000/- respectively. These transactions are sought to be proved by producing different pay-in-slips for different amounts viz. Rs. 18,750/-; Rs.18,750/-; Rs. 37,500/-; Rs.20,000/-; and Rs.20,000/- respectively. Mrs. Dighe failed to prove these borrowings for more than one reason. Firstly, there is no consolidated deposit in the bank account. Secondly, details written on the back of the pay-in-slips show receipt of cheques drawn on the State Bank of India, Shivaji Park Branch, State Bank of India, Veer Savarkar Marg, Canra Bank, Dadar (W) and Bank of Maharashtra, Ranade Road, Dadar. No material is on record to show that father and mother in law of Mrs.Dighe were holding bank accounts in these different banks. Mrs.Dighe tried to connect and establish these borrowings on the basis of cheques deposited on different dates. If at all, the transactions were genuine, it was not difficult for her to prove the same with relevant documents. She could have summoned banks for giving evidence. She could have produced earlier extracts of their respective accounts. She could have produced their pass books to establish that they were holding such different accounts in different banks. No such

material is produced. There is absolutely no evidence on record to establish her claim on this count.

(vii). Mr.Pravin, learned Counsel appearing for the petitioning creditor- Objector tried to challenge the borrowings alleged to have been made by Mrs.Dighe from her in laws. In his submission, in the normal and natural course, it is difficult to imagine that in Hindu society father-in-law and mother-in-law would not give money to their son but would give it to their daughter-in-law, that too; on loan. If at all loan was to be given by the father and mother obviously,; it would be given to a son and not to a daughter-in-law. In these circumstances, in his submission, case sought to be made out by Mrs.Dighe should not be accepted.

(viii) The submission made cannot be brushed aside lightly. Heavy burden lies on Mrs.Dighe to prove borrowings from her in laws. As a matter of fact, for not getting the bank officials examined as her witnesses with relevant record, which she could have done with the assistance of this Court, this is a fit case for drawing an adverse inference that had she called and summonned banks officials with record and examined them as her witnesses, that would not have helped her. There is no evidence on record except self serving statement of Mrs. Dighe

that she had borrowed moneys from her in laws. The same cannot be a substitute for documentary evidence. Her statement is not sufficient to prove her case on this count. Thus, claim made by her on this count is rejected.

(ix) The next two borrowings are; one from Mr. Ganesh Poojari in the sum of of Rs. 6,000/-; and another; from Mr. A.A.V.Lele in the sum of Rs.5,000/-; which can conveniently be accepted; since borrowings are made by cheques. Pay-in-slips evidencing deposits in the bank account are placed on record coupled with entries in the bank pass book.

22. In view of the aforesaid findings, the following transactions of raising moneys are proved by Mrs. Dighe.

1. Rs.79,979.00 - Sales proceeds of golden ornaments.
2. Rs.12,146.00 - Encashment of Recurring account.
3. Rs.15,000.00 - Loan from P.B. Naiksatam.
4. Rs.35,000.00 - Loan from P.R. Patkar.
5. Rs.14,000.00 - Loan from V.M. Raje.
6. Rs.10,000.00 - Loan Mrs. A.B. Nikam
7. Rs.14,000.00 - Loan from Mrs. Bhiwankar.

8. Rs.10,000.00 - Loan from D.K.Sawant.

9. Rs.06,000.00 - Loan from Ganesh Poojari.

10. Rs.5,000. 00 - Loan from Mrs. A.V. Lele.

Rs. 2.46,125.00 Total funds raised by

--- Mrs.Dighe.

23. Having recorded aforesaid findings, I hold that Mrs. Madhuri Dighe could prove her contribution for purchase of the subjct flat, to the extent of Rs. 2,46,125/- as against her claim in the sum of Rs. 4,70,000/-. The total purchase value of the subject flat on the date of purchase was in the sum of Rs. 5,17,500/-. If that be so, half of its value would be in the sum of Rs. 2,58,750/-. Thus, contribution of Mrs.Dighe for purchase of subject flat is not even 50% of its value on the date of purchase.

24. Let me now turn to her contribution towards payment of defecit stamp duty of Rs. 30,840/- and penalty therein in the sum of Rs. 17,735/- total amounting to Rs. 48,575/-. The entire payment cannot be treated on her share alone. This amount of Rs. 48,575/- paid was on account of deficit stamp duty and penalty calculated on the total value of sale deed. Thus, payment of Rs. 48,575/-

was on the share of both i.e. Mr. & Mrs.Dighe. She has not only discharged liability of herself but also of her husband. Both were liable to pay deficit amount of stamp duty and penalty thereon. As such, Mrs. Dighe's contribution will only be to the extent of 50% of the amount paid on this count and cannot be 100% as claimed by her.

25. In the above circumstances, it is not possible to hold that her contribution for purchase of flat was to the extent of 80% as claimed by her. Since the Official Assignee has himself recorded a finding that she could prove her interest to the extent of 50% in the subject flat, I conclude that the said finding is proper and based on proper appreciation of evidence and needs affirmation. Accordingly, I affirm the same.

26. Having said so, now, let me turn to the reliefs claimed by the Official Assignee. By way of first prayer, the Official Assignee has prayed for permission to take vacant possession of the subject flat No. 32, standing in the joint name of deceased insolvent and Mrs.Dighe. The said prayer cannot be granted considering the fact that only 50% undivided share stands vested in the Official Assignee. Unlesss the property is divided by meats and bounds, the Official Assignee cannot take

possession of the subject flat.

27. So far as second prayer is concerned, permission is sought to sell 50% undivided interest in the flat. I see no difficulty in granting said prayer. In the result, this prayer stands granted. It may not be in the interest of the estate of the deceased insolvent to sell 50% undivided share. It may not fetch any marketable price. However, it is left to the discretion of the Official Assignee either to seek partition of the said property or to proceed to sell 50% undivided share.

28. The Official Assignee shall also not be entitled to claim compensation @ Rs.1500/- p.m. as prayed for in prayer clause (c) for the reasons recorded hereinabove since entire flat does not vest in him.

29. The report submitted by the Official Assignee together with objections raised by Mrs. Madhuri Dighe stand disposed of in terms of this order with no order as to costs.

(V.C.DAGA,J.)